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No. 90-1126

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In The

# Supreme Court of the United States

October Term, 1990

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE SMITH,

*Petitioners,*

vs.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES, constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET, constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

*Respondents.*

**Petition For Writ Of Certiorari To The Supreme Court Of Illinois**

## BRIEF OF RESPONDENTS DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, AND DAVID BARRERA IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether the appearance of Harold Washington Party candidates on the ballot for the November 6, 1990 general election in Cook County, Illinois renders this case moot.

2. Whether the Court should decline review because the Illinois Supreme Court decision was based upon independent and adequate state grounds.

3. Whether the statutory requirement of 25,000 suburban nominating signatures for a new political party ballot access was reasonable and constitutional and served compelling state interests.

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## OPINIONS BELOW

Petitioners failed to advise the Court of the October 2, 1990 opinion of the United States District Court for the Northern District of Illinois holding that Illinois' statutory signature requirements were reasonable and constitutional. The opinion is set forth in the Appendix at page 1. Petitioners also failed to advise the Court of the April 15, 1991 order of the same United States District Court, dismissing their fraud complaints.

## OBJECTIONS TO JURISDICTION

1. This case is moot because petitioners appeared on the general election ballot on November 6, 1990.

2. The Court should decline review because the Illinois Supreme Court decision was based upon an independent and adequate state ground.

3. The Illinois Election Code's requirement of 25,000 city signatures and 25,000 suburban signatures for the formation of a new political party is reasonable and constitutional and serves compelling state interests.

## STATEMENT OF THE CASE

This case involves the application of the plain provisions of the Illinois Election Code concerning the formation of new political parties.

Harold Washington was a major force in Chicago politics. He was the first African-American to become

Chicago's mayor. He was mayor at the time of his death in 1987. Mayor Washington is revered in Chicago's African-American community. In 1988, Chicago Alderman Timothy Evans formed a city-wide political organization called the Harold Washington Party and ran for Mayor on its ticket in the Special Mayoral Election that followed Harold Washington's death.

On March 20, 1990, petitioner R. Eugene Pincham lost the Democratic primary election for the office of President of the Cook County Board of Commissioners. Mr. Pincham still wanted to run for Board President in the general election and, hoping to capitalize upon Mayor Washington's popularity, tried to create his own "Harold Washington Party."

The Illinois Election Code prohibits a new political party from using the same name as an established political party. The idea is to prevent the obvious confusion that would necessarily result if two political parties used the same name. The Election Code also provides that a new political party seeking ballot access in Chicago and in Cook County must demonstrate support in both areas by presenting nominating papers that contain a minimum of 25,000 signatures ("city signatures") of city residents and another 25,000 signatures ("suburban signatures") of suburban residents.

After full and extensive hearings before the Cook County Electoral Board, the Cook County Circuit Court, and the Supreme Court of Illinois, Mr. Pincham's Harold Washington Party was disqualified because it used the same name as an established party – Mr. Evans' Harold Washington Party – and because its nominating papers



did not contain 25,000 suburban signatures. The United States District Court in Chicago has reviewed the Election Code and found it to be reasonable and constitutional. *See Appendix* at 1.

On October 25, 1990, this Court entered the following order:

> The application for stay presented to Justice Stevens and by him referred to the Court is granted to the extent that the August 29, 1990 decision of the Cook County Officers Electoral Board, No. 90COEB-2, is to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari.

Mr. Pincham's Harold Washington Party appeared on the ballot and participated in the general election. It was resoundingly defeated in the public forum.

## ARGUMENT

### I. THE CONTROVERSY IS MOOT

The core of this litigation was whether petitioners were eligible candidates in the November 6, 1990 general election. That issue is moot. By this Court's order, petitioners were eligible candidates. The election is over. Petitioners' appearance on the ballot and the results of the election cannot be undone. Accordingly, there is no longer any need for the Court to adjudicate petitioners' ballot access.

The *Petition* should be denied because the issues presented are moot.

## II. THE STATUTORY REQUIREMENT OF 25,000 SUBURBAN SIGNATURES FOR NEW POLITICAL PARTY BALLOT ACCESS WAS REASONABLE AND CONSTITUTIONAL AND SERVED COMPELLING STATE INTERESTS.

The judgment of the Illinois Supreme Court was based only upon state grounds. It did not involve any federal question, let alone a substantial federal question. Under these circumstances, the Court has regularly declined review. *See Uhler v. AFL-CIO*, 468 U.S. 1310, 1311 (1984); *Herb. v. Pitcairn*, 324 U.S. 117, 125 (1945).

The Illinois Supreme Court ruled that petitioners violated the Illinois Election Code requirement that a petition for creation of a new political party "[s]hall not bear the same name as, nor include the name of any established political party as defined in this Article." 46 Ill. Rev. Stat. § 10-5. The purposes of § 10-5 are to avoid the perpetration of a fraud upon the electorate, to stem voter confusion, and to prevent splintered parties and unrestrained factionalism. *Stevenson v. State Board of Election*, 638 F. Supp. 547 (N.D. Ill.), *aff'd*, 794 F.2d 1176 (7th Cir. 1986); *Doty v. Representation For Every Person (R.E.P.) Party*, 97 Ill.App.3d 316 (1st Dist. 1981); *Vasquez v. Municipal Officers Electoral Board*, 115 Ill.App.3d 1014 (3rd Dist. 1983); *Ballentine v. Bardwell*, 132 Ill.App.3d 1033 (1st Dist. 1985).

Timothy Evans' Harold Washington Party was and is an established political party in Chicago. It was and is different from R. Eugene Pincham's Harold Washington Party. By choosing the name of an established party, Mr. Pincham directly violated the statute. Mr. Pincham could have avoided the statutory bar by taking a different name



for his party. He chose not to do so and thereby disqualified himself and his party.

The confusion and mischief of two Harold Washington Parties is obvious. Under present circumstances, the established city-wide "Tim Evans" Harold Washington Party and the new city-wide and county-wide "R. Eugene Pincham" Harold Washington Party are separate and distinct political entities, each of which is entitled to run candidates in all ensuing municipal elections for Chicago city officials. Two parties with separate sets of candidates running under the same name is simply antithetical to a free and informed electoral process.

Section 10-5 plays no favorites. It similarly prevents someone from forming another and new Republican Party or another and new Democratic Party and running as a republican or democrat. If Mr. Pincham is allowed to form his own Harold Washington Party and field a slate of candidates, then anyone can form their own Republican Party or Democratic Party and run as a republican and a democrat. This is obviously intolerable. This is precisely the sort of confusion the statute was designed to prevent.

## III. THE STATUTORY REQUIREMENT OF 25,000 SUBURBAN NOMINATING SIGNATURES FOR NEW POLITICAL PARTY BALLOT ACCESS WAS REASONABLE AND CONSTITUTIONAL AND SERVED COMPELLING STATE INTERESTS

The Illinois Election Code requires that, before a new political party may field a slate of candidates, it must file

nominating petitions signed by at least 5% of the voters in each district in which it intends to run.

Pursuant to § 1-3 (14) of the Illinois Election Code, Cook County consists of two political districts: the City of Chicago and suburban Cook County. As applied to Cook County and Chicago, the Election Code essentially requires that the new political party must file nominating petitions with 25,000 city signatures and 25,000 suburban signatures.

Petitioners obtained approximately 7,560 suburban signatures. They therefore failed to obtain the necessary 25,000 suburban signatures required by § 10-2.

Citing *Illinois State Board of Elections v. Socialist Worker's Party*, 440 U.S. 173 (1979), petitioners first contend that a new political party in Illinois need only obtain a total of 25,000 signatures from city or county voters.

Petitioner's legal reliance and analysis are wrong. *Socialist Worker's Party* does not support them. In that case, the Court ruled that, unless there was a compelling state interest, Illinois could not impose a more stringent signature requirement upon new political parties and independent candidates in Chicago than it imposed upon new political parties and independent candidates seeking State-wide office.

In the instant case, the reason for the 25,000 signature requirement *per* district is both clear and reasonable. A 25,000 signature requirement for each district guarantees that, before it is placed on the ballot, the new party must have some support from the voters of that district.



In 1986 (the last election at which Cook County Commissioners were elected), 1,476,370 people voted. 841,085 city ballots and 635,285 suburban ballots were cast. Given this substantial number of votes in both the city and the suburbs, the 25,000 signature requirement is a very modest one. Indeed, petitioners' approximately 44,000 city signatures plainly demonstrate that the 25,000 signature requirement for a district the size of Chicago or suburban Cook County can easily be attained with any sort of political support.

That fact was recognized by the Illinois General Assembly when, following the decision in *Socialist Workers' Party*, the Legislature amended § 10-2 of the Election Code which added the following sentence to paragraph 4 of § 10-2:[1]

> However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition.

Public Act No. 81-926, effective September 11, 1979.

The General Assembly, however, did not amend that portion of § 10-2 which requires the double 25,000 signature requirements at issue in this case. Demanding minimum demonstration of voter support protects the

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[1] Section 10-2 provides that the nominating petition of a new State-wide political party must be signed "by 1% of the number of voters who voted at the last preceding State-wide general election or 25,000 qualified voters, whichever is less."

integrity of the electoral process. The Court has found this to be a compelling state interest. *American Party of Texas v. White*, 415 U.S. 767, 783, n. 14 (1974). As the court explained in *Stevenson v. State Board of Elections*, 638 F.Supp. 547, 553-554 (N.D. Ill.) *aff'd*, 794 F.2d 1176 (7th Cir. 1986):

> One such interest is to prevent splintered parties and unrestrained factionalism. Id. at 735, 94 S.Ct. at 1281. *Anderson v. Clebrezze*, 460 U.S. at 803, 103 S.Ct. at 1577. As has been stated before, the Supreme Court in *Storer* recognized as legitimate the state's goal of discouraging independent candidacies prompted by short-term political goals, pique, or personal quarrel. *Storer* at 735, 94 S.Ct. at 1281; *Anderson*, at 803, 103 S.Ct. at 1577. Splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See the Federalist, No. 10 (Madison). There are further substantial state interests at stake: encouraging compromise and political stability; attempting to ensure that the election winner will represent a majority of the community; and providing the electorate with a ballot that will eliminate voter confusion. *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *Bullock v. Carter, supra*, at 145, 92 S.Ct. at 856.
>
> The Supreme Court decisions in *Anderson supra; Storer, supra; Rosario, supra;* and *Jenness, supra*, all support the position taken herein. Accordingly, the interests of ballot integrity, political stability, and voter representation all reflect legitimate state interests to be advanced by statute.

Petitioners argue that Illinois may not insist upon any showing of support from both districts because to do so would exceed the State-wide minimum. The Seventh



Circuit has twice rejected this argument. *See Bowe v. Board of Election Commissioners of City of Chicago*, 614 F.2d 1147 (7th Cir. 1980) and *Gjersten v. Board of Election Commissioners of City of Chicago*, 791 F.2d 472 (7th Cir. 1986). In *Bowe*, the Seventh Circuit stated:

> The plaintiffs apparently take the position that the *Socialist Worker's Party* case stands for the broad proposition that a state may never impose a higher signature requirement for an office of a smaller subdivision than the requirement imposed for any office of a larger subdivision. We cannot agree.

614 F.2d 1147, 1151

*Bowe* is also instructive for another reason. The requirement that a county-wide new political party must meet a 5% signature requirement in both the city and suburban districts is a proper legislative one to assure that the new party can show:

> a significant modicum of support. . . . Thus substantial minimum signature requirements serve compelling State interests, and the only question is whether the specific percentage chosen serves the State's compelling interests in a reasonable manner.

614 F.2d at 1151

Section 10-2's double 25,000 signature requirement answers *Bowe's* "only question" in the affirmative. It simply requires that a new political party must show "a significant modicum of support" in Chicago and in suburban Cook County. This is reasonable and serves a compelling State interest. Section 10-2 comports with the *Socialist Worker's Party* case and its progeny and should be followed.

*Anderson v. Schneider*, 67 Ill.2d 165 (1977) was properly found by the lower courts to be inapposite. *Anderson* considered the Election Code requirement that a new political party petition must contain a "complete list of candidates." In *Anderson*, the question was whether the ineligibility of one candidate on a new party petition renders all candidates ineligible. *Anderson* held that, when a candidate was ineligible, the eligible candidates would not be punished and their petitions would be honored. In this case, all of the candidates were declared ineligible because they all failed to file the requisite number of signatures.

It is clear, therefore, that both the Supreme Court of Illinois and the United States District Court ruled properly in holding that the signature requirements were reasonable, served compelling state interests and were, therefore, constitutional.

## IV. THE CLAIMS OF FRAUD ARE UNTRUE AND IRRESPONSIBLE

The Court's Rule 15.1 directs respondents "to point out any perceived misstatements" contained in the *Petition for Writ of Certiorari*. Respondents respectfully advise the Court that Mr. Pincham's petition is a piece of fiction.

At pages 7 to 9 of the *Petition*, petitioners state that respondents' objections to their nominating papers were tainted with fraud. The claim is false, reckless, and utterly irresponsible and, even in respondents' formulation, provides no basis for granting the writ.



These very charges formed the basis of a civil action for damages in the United States District Court for the Northern District of Illinois, Eastern Division in a case entitled *The Harold Washington Party, et al. v. The Cook County, Illinois Democratic Party, et al.*, 90 C 5731. On April 15, 1991, after briefing, the District Court decided all factual and legal issues against respondent and dismissed the complaint with prejudice.

Respondents filed six objections to Mr. Pincham's Harold Washington Party nominating papers. Objections 1 to 4 raised purely legal challenges. Objections 5 and 6 challenged the validity of the nominating signatures and requested that all signatures be checked for validity. Respondents' purported fraud occurred in Objections 5 and 6, neither of which were denied by respondents.

Objection 5 alleged that certain signatures were invalid because, for example, the signer was not a registered voter or because the signature was not genuine. Objection 6 provided in pertinent part:

> The Objectors further state that fifteen percent of all signatures to the petitions for the nomination of the Harold Washington Party were examined with the result that 53% of that amount were found to be invalid and contrary to the requirements of the Election Code.
>
> Accordingly, it is clear that the number of invalid signatures to the petitions for nomination of the Harold Washington Party is so large as to demonstrate a conscious disregard of the statutory requirements and demonstrate strongly that virtually all of the signatures to those petitions are invalid and fail to meet the requirements of the Illinois Election Code.

> The Objectors further state that they are submitting – in conjunction with the objections set forth in paragraph 6, as well as in conjunction with all of the objections in this Objectors' Petition – Exhibit A, the contents of which shall be incorporated herein and made a part herein.

In support of Objections 5 and 6, respondents offered the testimony of Bonnie McGuire, Exhibit A to the Objections and certain "Appendix Recapitulated Sheets."

Petitioners' characterization of the testimony of Mrs. McGuire is reprehensible. She did not testify that the challenges were false or that the recapitulation sheets were false. Mrs. McGuire testified that she prepared Exhibit A and the recapitulation sheets, that she personally examined 15% of the signatures on the nominating petitions, and that she found 53% of those examined were invalid for various reasons. Tr. 8/23/90 at 115-117. She further testified that she prepared Exhibit A to the Objections and that it documents her examination and its results. Tr. 8/22/90 at 25-31.

Exhibit A is very specific in its objection to each challenged signature. After reviewing Exhibit A, an attorney, Michael Carey, advised Mrs. McGuire that a separate challenge – "not signed in own proper person" – should be made to all signatures to avoid waiving the right to make more specific objections at a later date. Mrs. McGuire followed Mr. Carey's instructions and prepared blanket objections to all of petitioners' signatures. These objections were made in the recapitulation sheets.

Waiver was a justifiable concern because the Electoral Board has ruled that, if not made, a specific objection is waived, even in the face of clear evidence of a pattern of



false swearing and disregard of the Election Code. *Fortas v. Dixon*, 122 Ill.App.3d 697, 701 (1st Dist. 1984) Board Rule 10 provides that it "will consider only objections and specifications of such objections . . . . " *See Canter v. Cook Cty. Off. Electoral Board*, 170 Ill.App.3d 364, 367-368 (1st Dist. 1988).

Contrary to petitioners' assertion, the Board never found fraud concerning Objections 5 and 6. Indeed, the Board found that "Mrs. McGuire was a credible witness." App. to Pet. for Cert., Ex. D at 17. The Board rejected these objections because it would not accept the "shotgun format" of the recapitulation sheets. Its decision was based purely and simply upon the form of the appendix recapitulation. App. to Pet. Cert., Ex. D at 17.

Petitioners were successful on Objections 5 and 6. No Board or Court took any action adverse to petitioners because of anything having to do with Objections 5 and 6, Exhibit A, or the appendix recapitulation sheets. The contention that petitioners were disqualified on the basis of Objections 5 or 6 is plainly sophistry. Mr. Pincham's Harold Washington Party was ineligible for ballot access because it did not comply with other provisions of the Election Code.

In any event, respondents' challenges were legally made under the Illinois Election Code. 46 Ill. Rev. Stat. §§1-1, *et seq.*; *Fortas, supra; Canter, supra.* Resort to legally-provided procedures is not actionable, whatever the motivation. *Eastern Railroad Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127, 138, 145 (1961); *United Mine Workers of America v. Pennington*, 381 U.S. 657, 669-679 (1965).

In short, the suggestions of fraud have nothing to do with the question of whether or not this Court should grant certiorari. The claims are utterly irresponsible and form no part of this action. In fact, they were litigated and resolved against these petitioners.

## CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| TIMUEL BLACK, OBIE ROBERTS, FANNIE O'BANNON, TERRIE POPE, DONNLEY R. PHILLIPS, and KAREN R. NEAL, Plaintiffs, v. COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO BORGES, individually and in their official capacities as members of the Cook County Officers Electoral Board, CHICAGO BOARD OF ELECTORAL COMMISSIONERS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET; individually and in their official capacities as Members of the Chicago Board of Elections Commissioners, Defendants. | ) | No. 90 C 5529 |

MEMORANDUM OPINION AND ORDER

STATEMENT OF FACTS

Plaintiffs bring this action under 42 U.S.C. § 1983, seeking injunctive and declaratory relief. Plaintiffs are signatories to nominating petitions for candidates to the Harold Washington Party ("HWP"). Those candidates were disqualified from appearing on the ballot for county-wide elections to take place November 6, 1990.

Finding that the HWP had failed to meet certain requirements of the Illinois Election Code, Ill. Rev. Stat. ch. 46, Judge Eugene L. Wachowski of the Circuit Court of Cook County issued the disqualification order on September 20, 1990. Plaintiffs allege that Judge Wachowski's order, and the statutes underlying it, violated their Constitutional rights under the First and Fourteenth Amendments.

Concurrently with this action, the HWP appealed Judge Wachowski's decision to the Illinois Appellate Court. To expedite review, the Supreme Court of Illinois agreed to hear the case directly. Oral arguments there are scheduled to take place on October 3, 1990. Now before the court are plaintiffs' motion for a preliminary injunction and defendants' motion to dismiss. For the reasons stated below, the defendants' motion to dismiss is granted with prejudice.

## MOTION TO DISMISS

The intervening defendants, Dorothy Reed, Valerie A. Sutton, Patton L. Feichter, Ervin S. Ricks, and David Berrera, move to dismiss.[1] They present five grounds in support of their motion: abstention, the Anti-Injunction Act, res judicata, lack of subject matter jurisdiction, and failure to state a claim upon which relief can be granted. Although the first three grounds do not apply, the last two require dismissal of this action, as explained below.

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[1] These defendants, who had successfully challenged plaintiffs' nominating petition before the Circuit Court, were granted leave to intervene at the start of these proceedings.



(1) *Abstention*. Defendants urge the court to abstain pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). But the *Younger* doctrine, which forbids a federal court from enjoining state court proceedings, has no bearing on this action. More relevant are the abstention doctrines expressed in *Pullman*, *Burford*, or *Colorado River*, but none of these cases require the court to abstain here for one principal reason: delay. Where, as here, "the dispute contains an urgent temporal concern defined by the upcoming . . . election," abstention "would merely delay the ultimate resolution of the parties' dispute . . . " *Mintz v. Barthelemy*, 722 F. Supp. 273, 280 (E.D. La. 1989). *See also Badham v. U.S. Dist. Ct. for N.D. of Cal.*, 721 F.2d 1170, 1173 (1983) (no abstention in voting case, where the "dangers posed by an abstention order are particularly evident . . . delay in such cases is particularly insidious . . . "). Given the nature of plaintiffs' action, abstention would be inappropriate.

(2) *The Anti-Injunction Act*. According to defendants, the Anti-Injunction Act, 28 U.S.C. § 2283, compels the court to abstain. The Act prohibits federal courts from "grant[ing] an injunction to stay proceedings in a State Court . . . " That is not what plaintiffs have requested. Rather, they have brought a constitutional challenge to Illinois' election laws, and the Circuit Court's application of them. In any event, actions brought under 42 U.S.C. § 1983 are explicit exceptions to the Anti-Injunction Act. *Mitchum v. Foster*, 407 U.S. 225 (1972). The Act does not afford defendants relief.

(3) *Res Judicata*. Because plaintiffs were privy to the Circuit Court proceedings, say defendants, the doctrine of res judicata prevents them from bringing this suit. Res

judicata precludes the exercise of federal jurisdiction as to any matters raised, or which could have been raised, before the state court. *Allen v. McCurry*, 449 U.S. 90 (1980); *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75 (1984). Plaintiffs here deny being in privity with the plaintiffs who appeared before Judge Wachowski.

Whether or not there is privity is of no consequence.[2] Judge Wachowski expressly declined to consider plaintiffs' constitutional challenges in his order of September 20, 1990 ("The constitutionality of § 10-2 of the Election Code need not be addressed"). Because the Circuit Court did not address the constitutional claims brought by their privies, plaintiffs cannot be barred by res judicata from bringing them here. *Cf. Migra v. Warren City, supra*, at 84 ("In the present litigation, plaintiff does not claim that the state court would not have adjudicated her federal claims had she presented them in her original suit in state court.").

(4) *Lack of Subject Matter Jurisdiction*. It is well-established that lower federal courts have no jurisdiction to review the final determinations of state judicial proceedings. *See, e.g., Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986) (see cases cited). The Supreme

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[2] The court finds that privity clearly exists between the plaintiffs here and in the Circuit Court. Privity lies between " 'parties who adequately represent the same legal interests.' " *Hartke v. Chicago Bd. of Election Commissioners*, 651 F.Supp. 86, 90 (N.D. Ill. 1986) (citations omitted). Plaintiffs here are signatories to the petitions nominating candidates of the Harold Washington Party, who were the plaintiffs before Judge Wachowski. Their interests in this case are identical, as are the issues raised and the Election Code provisions involved.



Court recently revisited this principle in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In *Feldman*, the Court held that the district court lacked jurisdiction over much of the plaintiffs' challenge to a decision issued by the District of Columbia court. That court, which is equivalent to a state court, had denied the plaintiffs' petitions for waiver of certain requirements for admission to the D.C. bar. The Supreme Court explained:

> United States district courts . . . have subject matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state-court judgment in a particular case. They do not have jurisdiction, however, over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in this Court.

*Feldman*, at 486.

Applying this principle to the facts before it, the Court found the district court had jurisdiction to decide the constitutionality of the District of Columbia's bar rule, because that task did not require review of "a state court judgment in a particular case." *Id.* The district court had no jurisdiction to review Feldman's constitutional challenge to the rule's application in his particular case, however. *Feldman*, 460 U.S. at 486-87. The Court fashioned the following rule for courts to follow in deciding whether jurisdiction may be exercised:

> If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's

> application for admission to the state bar, then the district court is in essence being called upon to review the state court decision.

*Id.* at 482, n.16. As a host of cases following *Feldman* illustrate, the doctrine enunciated there applies to all state court judgments, not only those having to do with bar admissions. Furthermore, the *Feldman* doctrine applies to state judgments even though state court appeals are not final. *Worldwide Church of God*, at 893, n.3.

That plaintiffs here have, at least in part, sought direct review in this court of the Illinois Circuit Court's judgment can scarcely be denied. Their supporting memorandum is rife with language to that effect. See, for example, p. 9 ("the Court erred in its ruling that the nominating petitions of the HWP were defective for failure to include a slate of state officers . . . the Circuit Court's . . . decision is clearly erroneous."); p. 10 ("[b]oth the COEB and the Court were in error"); p. 13 ("[t]he imposition by the COEB and the Court that the HWP submit a total of 75,000 signatures . . . is violative of Ill. Rev. Stat. ch. 46 . . . the Equal Protection Clause, the First Amendment. . . . "); p. 14 (the Cook County Circuit Court's decision ". . . is constitutionally reprehensible . . . ").

Accepting plaintiffs' invitation to review the Circuit Court's decision would directly violate *Feldman*'s injunction against becoming "inextricably intertwined" in a final state court judgment. The court need not, however, dismiss the entire case on this ground. Like the Supreme Court in *Feldman*, this court must "differentiate between federal district court review of a state court's specific determination (which is prohibited) and a general challenge in federal court to the constitutionality of a state



rule or procedure (which is permissible)." *Kramer v. Exchange National Bank and Hon. Sophia J. Hall*, 1988 U.S. Dist. Lexis 1087 (N.D. Ill. 1988), p.6.

The case of *Worldwide Church of God, supra*, offers some useful guidance in applying the Supreme Court's "inextricably intertwined" standard. Claims are inextricably intertwined

> if the district court must "scrutinize not only the challenged rule itself, but the [state court's] application of the rule . . . " If, in order to resolve the claim, "the district court would have to go beyond mere review of the rule *as promulgated*, to an examination of the rule *as applied* by the state court to the particular factual circumstances of [the plaintiff's] case," then the court lacks jurisdiction.

*Worldwide Church of God*, at 892, *citing Razatos v. Colorado Supreme Court*, 746 F.2d 1429, 1433 (10th Cir. 1984), *cert. den.*, 471 U.S. 1016 (1985).

The foregoing principles afford plaintiffs a narrow window through which they may seek relief in this court. While not a model of clarity, their complaint and subsequent memoranda seem to challenge not only Judge Wachowski's application of Illinois' election laws, but also the constitutionality of the laws themselves. Insofar as plaintiffs dispute the Circuit Court's interpretation or application of the Illinois election code, this court lacks subject matter jurisdiction to entertain the challenge. To the extent that plaintiffs bring a constitutional challenge

to the election code itself, the court may hear it. In that light, the court addresses plaintiffs' claims below.[3]

## CONSTITUTIONAL CLAIMS

In their complaint, plaintiffs raise two constitutional claims over which this court has jurisdiction. Plaintiffs first allege that the signature requirement for new political parties seeking to be placed on the ballot in county-wide elections in 46 Ill. Rev.Stat. § 10-2 (1989) ("§ 10-2") is unconstitutional. The second constitutional argument raised by the plaintiffs is that the requirement under § 10-2 that a new political party field a complete slate is unconstitutional, if a complete slate includes a full slate of judicial candidates.

(1) *Signature Requirement*. Section 10-2 allows a group of persons wishing to establish a new political party within a county to file a petition with the county clerk to obtain a place on the ballot at the next election.

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[3] The Cook County Officers Electoral Board, Stanley T. Kusper, Jr., Aurelia Pucinski and Ernesto Borges have filed their own motion to dismiss. The gist of their motion is that the Electoral Board "has no authority to place the candidates back on the ballot." Motion, p.4. Nevertheless, movants concede that "it is not unknown for an electoral board to submit itself to the jurisdiction of the court for purpose of implementing orders relating to the preparation of ballots." Motion, n.2. Given this fact, the court declines to dismiss the Board and its members from the case. Likewise, the court declines to dismiss on the technical ground that none of the named plaintiffs are suburban voters. It would delay these proceedings unnecessarily to do so, when plaintiffs could clearly furnish an appropriate individual plaintiff.



The HWP wished to obtain its place on the ballot by acquiring the requisite number of signatures. Because the HWP hoped to run candidates for the Cook County Board, which is composed of suburban and city commissioners, it had to meet the signature requirement of § 10-2 for each "component" of the county of which its ticket was comprised.

The signature requirement of § 10-2 for running a ticket of county officers reads:

> If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area.

The 5% signature requirement was found to be unconstitutional to the extent that it imposed on those wishing to enter local elections a more stringent signature requirement than it imposed on those entering state-wide elections. *Illinois State Board of Elections v. Socialist Worker's Party*, 440 U.S. 173 (1979). To remedy the constitutional problem, the signature requirement of § 10-2 was amended to read:

> [W]henever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition

> signature requirement shall be the minimum for such district or political subdivision.

The state-wide petition signature requirement is "1% of the number of voters who voted at the next preceding State-wide general election or 25,000 qualified voters, whichever is less."

Section 10-2 goes on to require that "such petition shall consist of separate components for each district from which an officer is to be elected." The County Officers Electoral Board ("Electoral Board") considered this to include three components in the case of the HWP: the city, suburbs, and the Metropolitan Water Reclamation District ("MWRD"). Judge Wachowski of the Circuit Court of Cook County, on the other hand, determined the MWRD to be a separate political subdivision and not a component of Cook County. Therefore, Judge Wachowski found that under § 10-2, the HWP was required to gather 25,000 signatures from each of the city and the suburbs, totaling 50,000.

It is the requirement that the HWP gather 25,000 suburban signatures for the suburban component of its ballot to which the plaintiffs address their constitutional attack. Plaintiffs argue with regard to the suburban component that:

> The Board's and the Review Court's decisions that the Harold Washington Party nominating petitions for suburban members of the Cook County Board of Commissioners required 25,000 signatures were clearly invalid and unreasonable, in that there are only 25,000 signatures required from the entire county, i.e. Chicago and



> the suburbs, for the nominating of county officers of Sheriff, State's Attorney, Assessor, Treasurer, Clerk, President of the Board of County Commissioners, Superintendent of Education; and to likewise require an equal 25,000 signatures solely from the suburbs to nominate seven suburban Cook County Board members is irrational and unreasonable.

Complaint, p.16.

On a number of occasions, the Supreme Court has addressed the issue of what hurdles a state may constitutionally impose on a new political party. The Court has acknowledged that any restrictions on access to the ballot "burden two distinct and fundamental rights, 'the right of individuals to associate for the advancement of political beliefs and the right of qualified voters, regardless of their political persuasion, to cast their voters effectively.' " *Socialist Workers*, 440 U.S. at 184, citing *Williams v. Rhodes*, 393 U.S. 23 (1968). Because certain fundamental rights are at stake, a state must demonstrate that a compelling interest is served by the restrictions at issue. *Socialist Workers*, 440 U.S. at 184; *American Party of Texas v. White*, 415 U.S. 767, 780-781 (1974).

In general, the courts have upheld state laws regulating elections if "the state's justification is logically sound and consonant with common experience." *Citizens for J.W. Moore v. Chicago Election Commissioners*, 665 F.Supp. 1334, 1139 (N.D. Ill. 1987). Thus, the Supreme Court has found that a state's interest in keeping its ballots within manageable, comprehensible limits is a legitimate interest, *Bullock v. Carter*, 405 U.S. 134 (1972); as is a state's interest "in requiring some preliminary showing of a significant

modicum of support before printing the name of a political organization's candidate on the ballot – the interest, if no other, in avoiding confusion, deception and even frustration of the democratic process at the general election." *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). In *Lubin v. Panish*, 415 U.S. 709, 715 (1974), the Court observed:

> A procedure inviting or permitting every citizen to present himself to the voters on the ballot without some means of measuring the seriousness of the candidate's desire and motivation would make rational voter choices more difficult because of the size of the ballot and hence would tend to impede the electoral process.

A state may regulate to ensure an efficient electoral process, but it must do so in the least drastic way. *Id.* at 716.

Plaintiffs argue that the requirement in § 10-2 that the same number of signatures be collected for the city and the suburban component of the HWP petition is irrational and unreasonable. In support of their contention, plaintiffs rely on *Socialist Worker's*, 440 U.S. 173, a Supreme Court case that found a geographical disparity in the signature requirements under the Illinois election laws to be unconstitutional. *Socialist Worker's* was one of a series of challenges brought against the Illinois election code, on the grounds that its geographical apportionment requirements were unconstitutional.

The first such challenge, brought in *Moore v. Ogilvie*, 394 U.S. 814 (1969), led the Supreme Court to strike down an Illinois requirement that petitions nominating candidates to new political parties be signed by at least 25,000 qualified voters, including 200 qualified voters from each of at least 50 counties. The Court held that this provision



violated the due process and equal protection clauses of the Fourteenth Amendment, because 49 of the counties in Illinois contained 93.4% of the registered voters, while the remaining 6.6% of registered voters came from the remaining 53 counties. This concentration of registered voters in fewer than 50 of the counties meant a situation could arise in which 93.4% of the registered voters would be unable to form a new political party, while 6.6% of the registered voters could form a party. In this way, the strength of the majority of Illinois voters was diluted in an unconstitutional manner.

After the Illinois statue was amended to comply with *Moore*, the Supreme Curt was again faced with questions concerning the constitutionality of the signature requirements. *Socialist Worker's*, 440 U.S. 173. In *Socialist Worker's*, the Court struck down a signature requirement that conceptually parallels that faced by the HWP. Under the Illinois election law as it stood at the time the *Socialist Worker's* suit was brought, a new political party interested in entering local elections had to collect more signatures to get on the ballot than did a candidate for a state-wide election. The state could offer no reason for the disparity other than the fact that state-wide candidates had been subject to a geographic requirement as well, until the Seventh Circuit struck that down in *Communist Party of Illinois v. State Board of Elections*, 518 F.2d 517, *cert. denied*, 423 U.S. 986 (1975). The disparity was, in other words, the result of an "historical accident," which, the Supreme Court held, did not constitute sufficient reason to sustain the provision. 440 U.S. at 187.

*Socialist Worker's* does not suggest that equivalent requirements may not be imposed on differently sized

geographic areas. Thus, as a consequence of the *Socialist Worker's* decision, § 10-2 was amended to include the provision ensuring that the minimum signature requirement for a district or a political subdivision would never exceed that for State-wide office. Moreover, the Seventh Circuit has cautioned against drawing broad generalizations from the language of *Socialist Worker's:*

> The plaintiffs apparently take the position that the *Socialist Worker's Party* case stands for the broad proposition that a state may never impose a higher signature requirement for an office of a smaller subdivision than the requirement imposed for any office of a larger subdivision. We cannot agree.

*Citizens Party v. Illinois State Board of Elections*, 546 F.Supp. 1050, 1057 (1982); *Bowe v. Board of Election Commissioners of the City of Chicago*, 614 F.2d 1147, 1151 (1980).

In the last election for Cook County Board Commissioners, 1,476,370 voters cast their ballots. Of those, 841,085 were cast in the City of Chicago, and 635,285 were cast in the district outside the city. Nothing in either *Moore* or *Socialist Worker's* counsels this court to find a signature requirement of the lesser of 25,000 or 5% unconstitutional. The disparity created by the parallel requirements for the suburban and city components of the petition under § 10-2 does not create anything like the disparity at issue in *Moore*. In fact, the breakdown between the city and the suburban components was 57% and 43% respectively in 1986 and is much closer today. As the Electoral Board found in its decision of August 29, 1990, "[t]he fact that 44,000 signatures were collected in Chicago, which has only slightly more voters than suburban Cook, supports the Board's position that the 25,000



suburban requirement would be attainable if the HWP had a modicum of support in that jurisdiction." (Decision of the Electoral Board, p.13).

Furthermore, because the Board of Cook County Commissioners is composed of representatives from the city and the suburban district, the requirement that petitions be fielded from both districts is not the result of "historical accident" as in *Socialist Worker's Party*. Instead it is an efficient means of ensuring that candidates for the Cook County Board have the support of their constituents.

If the signature requirement were compounded by other unduly burdensome requirements, this court would find the signature requirement more constitutionally troubling. For example, in *Williams*, 393 U.S. at 24-25, the Supreme Court struck down a requirement that a new political party "obtain petitions signed by qualified electors totaling 15% of the number of ballots cast in the last gubernatorial election," when, in addition, that party was subject to other burdensome procedural and organizational requirements, including the requirement that a new political party run a primary election.

In *Jeness*, 403 U.S. 431, the Supreme Court upheld a 5% signature requirement, in the face of claims that established parties were advantaged by the fact that they did not face the same requirements. The Court rejected that argument, because members of established parties faced comparable burdens, such as holding primary elections. The same differentiation applies in Illinois, in which candidates from new political parties must comply with stringent signature requirements, whereas candidates

from established political parties must submit to primaries. *Jeness*, like *Williams*, illustrates the fact that signature requirements, without more, are not inherently burdensome.

In fact, the Supreme Court has held that "[d]emanding signatures equal in number to 3% or 5% of the vote in the last election is not invalid on its face." *American Party of Texas v. White*, 415 U.S. 767, 789 (1974). In light of the above, it cannot be said that a signature requirement of the lesser of 25,000 or 5% signature is unconstitutional.

(2) *Complete Slate Requirement*. We turn next to plaintiffs' second constitutional argument. Plaintiffs contend that it is unconstitutional to require a new political party to field a complete slate of judicial candidates along with a complete county slate. The argument involves the interpretation of an element of § 10-2 which requires the petition filed by a new political party to "contain a complete list of candidates of such party for all offices to be filled in the . . . political subdivision."

Judge Wachowski found that a complete slate included judicial candidates, and he, therefore, disqualified the HWP, in part, because of its failure to file any candidates for judicial office in Cook County. The Election Code does not expressly require a full slate of judicial candidates in order for a party to meet the complete slate requirement. As the Electoral Board noted, judicial offices are state, rather than county offices. (Decision of the Electoral Board, p.21). Moreover, judges are elected from separate judicial districts rather than by county, as county-wide officers are elected. It happens that in three counties, including Cook, the county subdivision and the



judicial district are coextensive. This is generally not the case, however. For this reason it seems illogical and contrary to the language and intent of the Illinois General Assembly to interpret the complete slate provision to include state judicial candidates in county-wide elections.

The only court which has interpreted the complete slate requirement of the Illinois election code is the Illinois Supreme Court in *Anderson v. Schneider*, 365 N.E.2d 900 (Ill.S.Ct. 1977). In that case, the Illinois Supreme court refused to knock the entire slate of a new political party off the ballot merely because one candidate did not meet the residency requirement. The court determined that § 10-2 does not serve as an onerous procedural requirement, but rather it aims "to obviate the possibility that a candidate might also run as an independent or as the candidate for some other party, a practice forbidden by Section 10-7 of the Code." This interpretation of the complete slate requirement as an attempt to prevent a candidate from taking two bites at the same apple underscores the idea that a full judicial slate does not fall within its terms.

In this court's view, judges are not part of the complete slate requirement set forth in § 10-2. As such, the court finds nothing unconstitutional in the requirement that the petition filed by a new political party must contain "a complete list of candidates of such party for all offices to be filled in the . . . political subdivision." By ensuring that candidates run only once, on the ticket on which they are slated, the state's interest in an efficient electoral purpose is served.

To the extent that the plaintiffs would have this court review Judge Wachowski's interpretation of § 10-2 concerning the judicial slate requirement, this court does not have jurisdiction to do so. Under the *Feldman* doctrine, as noted above, a federal district court cannot review the final decision of a state court judge.

(3) *Conclusion*. For the foregoing reasons the court holds that the signature requirement is not unconstitutional as it applies to the separate components which comprise Cook County. The court further finds that the complete slate requirement is not unconstitutional insofar as its does not require a new political party to field a complete slate of judicial candidates. Plaintiffs have failed to state a claim upon which relief can be granted. Accordingly, defendant's motion to dismiss is granted with prejudice. This shall constitute a final appealable order.

ENTER:

/s/ John A. Nordberg
JOHN A. NORDBERG
United States District Judge

DATED: October 2, 1990